

HUGHES SIDES WITH GRABBERS OF LAND, AGAINST SETTLERS AND STATES—MANLY

BY BASIL M. MANLY

In his attitude on the public land question, Charles E. Hughes sides with the great corporations, and against the homesteader and the state.

This is deduced at least by his decisions in the two land cases on which the court has decided since he became a member of the highest tribunal.

As governor of New York, when conservation was in the ascendant, Hughes announced a water power and public land policy still viewed with pride by Pinchot's followers.

In messages and speeches for conservation, he went beyond Roosevelt.

BUT as a supreme court justice in these two cases his sympathies appear WITH the corporations and AGAINST the genuine homesteader, and the state.

The first case was that of Weyerhaeuser ("timber king") vs. Hoyt. This particular case involved only 40 acres; but it established railroads' claims to thousands of acres and resulted in the ejectment of many homesteaders. The facts follow:

Dec. 17, 1897, R. B. Jones, original settler, entered his claim to the tract, and complied with all formalities.

March 27, 1898, no adverse claim having been filed, Jones paid the full purchase price, all fees, etc., and in December, 1898, took possession, receiving the official receipt and certificate of purchase.

Dec. 2, 1901, nearly THREE YEARS after Jones got his certificate of purchase and after he had sold the land to Hoyt, the commissioner of the land office cancelled the Jones entry as void on the ground the land was selected in a list filed by the Northern Pacific railroad, Oct. 17, 1883.

This selection by the railroad had

been cancelled in March, 1897, as being east of Duluth, at that time held to be the eastern terminal of the land territory. The railroad secured a ruling from the supreme court that the eastern terminal was Ashland, Wis. But this decision was not handed down until after Jones had actually perfected his claim and entered upon possession. Furthermore, the list filed by the railroad was not approved until many years after Jones received his certificate of purchase, nor was the railroad's patent issued until October, 1905.

In this case Hughes found in favor of the railroad, along with White, Van Devanter, Lurton and other standpat justices.

No difficult question of law was involved; Justice Day and Harlan dissented vigorously. Hughes considered the filing by a railroad of its desire for a piece of land, even though that choice was not approved, superior to the bona fide entry of a homesteader.

The important case is that of the Montello Salt Co. vs. Utah. This case dealt with a clause in the enabling act of Utah which granted to the state, for purpose of establishing a university, "land to the extent of two townships (46,080 acres), and in addition 110,000 acres of land * * * including all saline lands in the state."

The state, assuming that the act, in saying ALL SALINE LANDS, meant what it said, sued to recover 40,000 acres with immensely valuable salt deposits taken up by the Montello Salt Co.

The state courts all found against the salt company, which appealed to the supreme court, urging that the act did NOT give the state ALL the saline lands, but only allowed them to include saline lands in their 110,000 acres.

The opinion of the supreme court.